



**IN THE HIGH COURT OF SOUTH AFRICA  
[WESTERN CAPE DIVISION, CAPE TOWN]**

Case no:23230/23

In the matter between:

<b>ECONOMIC FREEDOM FIGHTERS</b>	First applicant
<b>JULIUS SELLO MALEMA, MP</b>	Second applicant
<b>NYIKO FLOYD SHIVAMBU, MP</b>	Third applicant
<b>MBUYISENI QUINTIN NDLOZI, MP</b>	Fourth applicant
<b>MARSHALL MZINGISI DLAMINI, MP</b>	Fifth applicant
<b>VUYANI PAMBO, MP</b>	Sixth applicant
<b>SINAWO PAMBO. MP</b>	Seventh applicant
and	
<b>THE CHAIRPERSON OF THE POWERS &amp; PRIVILEGES COMMITTEE</b>	First respondent
<b>THE SPEAKER OF THE NATIONAL ASSEMBLY</b>	Second respondent
<b>THE SECRETARY TO PARLIAMENT</b>	Third respondent
<b>THE INITIATOR N.O.</b>	Fourth respondent
<b>THE MINISTER OF JUSTICE &amp; CORRECTIONAL SERVICES</b>	Fifth respondent
<b>THE CHAIRPERSON, NATIONAL COUNCIL OF PROVINCES</b>	Sixth respondent

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**JUDGMENT DELIVERED (VIA EMAIL) ON 8 FEBRUARY 2024**

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**SHER, J (SAVAGE J et MANGCU-LOCKWOOD J concurring):**

1. We have before us an application for an interim interdict, alternatively a so-called 'suspension order', pending the finalisation of an application for declarators that National Assembly Rule 214 and the Schedule thereto (which deal with the procedure which is to be followed by Parliament in the investigation and determination of allegations of misconduct and contempt by members thereof), and certain proceedings in which second to seventh applicants ('the applicants') were found to be in contempt of Parliament, are unlawful and unconstitutional; together with certain ancillary relief.
2. Second to seventh applicants are members of the 1<sup>st</sup> applicant party and serve as its elected representatives in the National Assembly. At the occasion of the State of the Nation Address ('SONA') by the President at a joint sitting of the National Assembly and the National Council of Provinces on 9 February 2023, they allegedly advanced towards him in a threatening manner and disrupted the proceedings in a manner which was against the dignity, decorum, and good order of the House.
3. On 7 November 2023 they were notified that they were to be disciplined for these acts, by way of a charge of contempt of Parliament, in respect of which proceedings were to be held between 20-22 November 2023 before the Powers and Privileges Committee ('the Committee'), a Standing Committee established in terms of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act.<sup>1</sup>
4. The applicants duly appeared before the Committee on 20 November, assisted by counsel, at which time they made application for a postponement on various grounds, which was refused, whereupon the applicants intimated they were not

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<sup>1</sup> Act 4 of 2004.

- prepared to subject themselves to the process and they absented themselves, together with their legal representatives.
5. The initiator then tendered evidence, in their absence, and thereafter submitted that the Committee should find the applicants guilty as charged. As to the sanction that was to be imposed, he requested that they should be ordered to tender an apology to the President, the House, and the people of South Africa and should be suspended from the House for a period of 10 days from 6 to 16 February 2024. In motivating for those particular dates, the initiator said this would ensure that the applicants would not be able to attend SONA 2024 and disrupt its proceedings, given what they had done the year before. After due consideration the Committee returned a finding of guilty as charged and in lieu of the sanction which was to be imposed recommended not only the apology requested but, in addition, that the applicants should be suspended for a period of 1 month, with effect from 1 February 2024. On 1 December the Committee tendered its report to the House. After deliberation, on 5 December 2023 the House resolved to accept the report and its findings, as well as the sanctions which were recommended.
  6. Although it was clearly of importance for any challenge to this decision to be launched expeditiously, given that it was the end of the year and Parliament and the Court were heading into the holiday recess period which extends from December into January, the applicants only launched an application on 20 December 2023, in terms of which they set the matter down for hearing on a 'semi-urgent' basis on 18 January 2024. The timetable which the applicants set for the filing of papers required the respondents to file their answering affidavits by Friday, 8 January 2024. The notice of motion made no provision for dates for the filing of the applicants' replying affidavit and the parties' heads of argument.
  7. In the notice of motion the applicants indicated that they would be seeking a range of orders declaring the Rules of Parliament and the proceedings whereby they were held to be in contempt, as well as the sanctions which were imposed upon them, to be unconstitutional and unlawful. Curiously, the applicants did not seek to urgently obtain an order for prior, interim relief interdicting the

implementation of the decision of the House pending the outcome of the substantive, declaratory relief which they sought, either separately by way of a second application or, as is common practice, in the application itself as a preliminary step. Instead, they claimed interim relief as an alternative to the final, declaratory relief which was sought. Importantly also, the interim relief was framed in the form of an interdict which would suspend the operation of the sanctions which were imposed, which was to be in place pending the 'finalization' of the application. Thus, as I understand it, what was sought was an alternative order for an interim interdict which was to endure (only) until the application itself had been determined by the Court before which it was brought.

8. The respondents filed their answering affidavits on Monday, 11 January 2024, a day later than they had been called upon to do. Some 6 days later, on 17 January 2024, the applicants took the view that the matter was not ready to be heard the following day. At that stage their replying affidavit and the parties' heads of argument were still outstanding. Consequently, the judge who was allocated to hear the matter (Cloete J) was requested to postpone it, by agreement, for hearing on 29 January 2024, in terms of an order which made provision for the filing of the outstanding replying affidavit by 19 January 2024 and the applicants' heads of argument by 22 January 2024.
9. Notwithstanding the agreed terms of the order neither the replying affidavit nor the heads of argument were filed timeously, in accordance therewith. The replying affidavit was only filed on 25 January 2024. It appears that the delay was occasioned by the unfortunate passing of a family member of one of the applicants' three counsel. But no explanation was tendered for the failure to file heads of argument by 22 January 2024.
10. On 23 January 2024 the parties were notified by the Acting Judge-President that a full bench had been constituted to hear the matter. At a case management meeting which was convened by the senior judge on the panel (Erasmus J) on 25 January 2024 it was noted that the order of Cloete J had not been properly complied with by the applicants, and the matter was in danger of not being heard on the 29<sup>th</sup>. By that stage the papers were already in excess of 1000 pages and

Erasmus J pointed out that the Court could hardly be expected to read the entire record and the authorities which had been provided, and to hand down a judgment within 2 days of the matter being heard. Consequently, the parties were adjured to ensure that the heads were filed on time, in order that the Court could be properly prepared. By close of business on Friday 26 January the heads of argument had still not been filed. They were uploaded electronically to a 'dropbox' facility shortly before midnight but were not filed with the Court before the matter was heard on the Monday following.

11. It is not surprising that, as a result of these circumstances, after having heard argument on this aspect Erasmus J and Cloete J were of the view that the matter was not ripe for hearing and struck it off the roll with costs. In doing so Erasmus J made pointed remarks in his judgment about the applicants' failure to ensure that the matter was properly before the Court so that it could be heard.
12. The applicants were nonplussed by this and simply re-enrolled the matter two days later, setting it down for hearing for the second time, on 6 February 2024 i.e. on 3 (court) days' notice. By that time they had filed their heads of argument but had not filed an application for condonation in respect thereof, as they had been urged to do by Erasmus J on 25 January 2024. As at the date when the matter was heard before us no formal application for condonation had yet been filed, but an attempt was made<sup>2</sup> at providing an explanation for the applicants' non-compliance, in terms whereby it was averred that there had been an 'ambiguity as to the time deadline' by which the heads had to be filed, which had stemmed from a '*bona fide* error.' Given the clear terms of the order of Cloete J the explanation is not acceptable.
13. In re-enrolling the matter, the applicants presented an amended notice of motion in which the relief they sought was now divided into 2 parts: in Part A they sought urgent interim relief in the form of an interdict suspending the decision of the House to adopt the report of the Committee and the sanction and penalties which had been proposed therein. In the alternative, an order was sought suspending the operation of the report as adopted, including the sanctions and penalties. The

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<sup>2</sup> In the supplementary founding affidavit.

relief which was sought in the amended notice of motion clearly differed substantially in form, if not in substance, from the relief which had been sought only as an alternative, in the original notice of motion. The terms of the amended notice of motion now required a separate, preliminary hearing to be held for urgent, interdictory relief and in the alternative thereto, for an order suspending the operation of the report of the Committee and the sanctions which had been imposed in terms thereof. Nonsensically, although the matter was re-enrolled for hearing on 6 February 2024 the amended notice of motion sought to afford the respondents 10 days to file a notice to oppose, if any, and a further 15 days thereafter to file their answering affidavits.

14. In support of the amended relief which was sought the applicants filed a supplementary founding affidavit, to which were attached several annexures which included several judgments, which totalled 100 pages plus.
15. The respondents gave notice that they intended to oppose the matter in its amended format. They contended that in its revised form the application was irregular and a further abuse of process. In their view, the applicants were not at liberty to simply file an amended notice of motion in which they re-worked the relief which they sought, in a manner which changed the nature thereof fundamentally, from the relief which was initially sought. They contended that the applicants should have given notice of their intention to amend the notice of motion, thereby affording the respondents an opportunity to object thereto, whereafter the Court could determine whether to grant the amendment which was sought or not. In addition, they contended that setting the matter down as one of extreme urgency on 3 days' notice was in itself an egregious abuse of process and placed them and the Court in an untenable position. In the circumstances, the manner in which the matter had been put before the Court for a 2<sup>nd</sup> time warranted, at best, that it be struck from the roll for a second time, or at worst, that it be dismissed out of hand, with a punitive order for costs. In response the applicants filed a supplementary replying affidavit in which they glibly asserted that the application which was before the Court was no more than a 'repackaging' of the one which had been originally brought. They contended

that, inasmuch as the papers were in order and the matter was ready to be heard a day after it had been struck, they were entitled to re-enrol it again for hearing.

16. In my view, these assertions are somewhat facile. The application which is before us is undoubtedly a different one from that which served before the full court on 29 January 2024. What the applicants did was to shoehorn an application for urgent relief before a second Court because of the difficulties in which they found themselves, as a result of their initial failure to have applied timeously for the necessary interim relief, in the manner in which it is usually done.
17. The applicants surely realized already at the beginning of December 2023 that, unless they made application to obtain an appropriate order urgently, well before the end of January 2024, they would be suspended, with the accompanying loss of pay and benefits that would bring. In this regard, in para 21.5 of the founding affidavit 2<sup>nd</sup> applicant noted that if the application could not be heard on a date before 1 February 2024 the applicants would ask for an interim order for the suspension of the coming into operation of the sanctions which had been imposed, until the matter could be heard. Despite this statement no attempt was made before the end of January, to obtain such relief.
18. It must have similarly been clear to the applicants and their legal representatives on 18 January 2024 that a postponement to the end of January would place the obtaining of the necessary interim relief at risk, yet they again did not take adequate and effective steps to have that aspect of the application adjudicated upon first. Instead, they were content to let the matter go before the full court on 29 January 2024 on the basis that it was to be argued on the substantive merits thereof, with the protection they required by way of an interim order to be argued as an alternative thereto. This was irresponsible. In addition, to compound matters the applicants failed to ensure that the requisite procedural steps were complied with timeously, in accordance with the timetable which they set, in terms of the order which they obtained for the postponement. This added to the risk that they would not be able to obtain interim protection by the time 1 February 2024 arrived.

19. It was only when the applicants were tossed out of Court on 29 January 2024, for their failure to ensure that the matter was in order, that they then urgently set about attempting to right a situation which had already gone terribly wrong. And in trying to do so they forced an impossibly tight schedule and timeline on Parliament and its legal representatives and another panel of 3 judges, some of whom were on duty in the motion and urgent Court. In the circumstances the applicants only have themselves to blame for the predicament they find themselves in. The urgency which was attendant on the matter being heard for a second time was one created by the applicants' laxity and their failure to obtain a prior, interim order and to comply with the terms of the order which was granted at their instance on 18 January 2024.
20. In my view, the applicants could not, in such circumstances, reasonably come to Court for a second time and expect to be heard on an extremely urgent basis, when they were the source and cause of why it had become so urgent. As was the case with the first Court, expecting a second full Court to force reams of paper down its throat over a weekend and to digest the contents thereof so that the matter could be heard and judgment handed down in the space of a day or two thereafter, was also wholly unreasonable.
21. In my view, these circumstances on their own clearly warrant the application being struck from the roll for a 2<sup>nd</sup> time, with a punitive costs order. But, given the importance of the issues involved and the need to do justice to the parties, and the fact that striking the matter from the roll will not provide a solution to the immediate dispute (given that the applicants are seemingly not dissuaded from approaching the Court at short notice and could do so again), in my view we should proceed to consider the merits of the application.
22. In this regard, and by way of a preliminary remark, in *OUTA*<sup>3</sup> the Constitutional Court warned that Courts are not to grant temporary restraining orders against the exercise of statutory power by organs of state, save in exceptional circumstances and when a strong case for the relief which is sought has been made out. The reason for this caution is that the Constitution requires not only

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<sup>3</sup> *National Treasury & Ors v Opposition to Urban Tolling Alliance & Ors* 2012 (6) SA 223 (CC) para 44.



that the Courts are to ensure that all branches of government act within the confines of the law, but also that, when doing so, they do not overreach and encroach on the domain of the other branches. Thus, a temporary restraint against the exercise of state power, before the adjudication of the substantive merits of a dispute, must be granted only in the 'clearest' of cases and after due and careful consideration of any possible harm to the separation of powers.<sup>4</sup> To this end the Court is required to carefully consider whether the terms of the restraining order which is proposed would 'trespass unduly' upon the terrain of the affected branch of state, before the final determination of the main application or action concerned.<sup>5</sup>

23. That then, is the framework against which the application and the relief which is sought must be considered. As far as the specific requirements which are necessary for obtaining the relief which is claimed, as was confirmed in *OUTA* the well-established common law requirements for an interim interdict apply. In this regard it is trite that the applicants were therefore required to show that 1) they had a *prima facie* right (albeit one which was open to doubt) which 2) if not protected by means of the order which was sought, would suffer irreparable harm 3) that the balance of convenience favoured the grant of the relief sought and 4) that they had no other reasonable, satisfactory alternative remedy. In my view, the applicants failed to make out a case in respect of each of these requirements.
24. In their founding affidavit the applicants launched a broad and far-ranging attack on the proceedings which took place before the Committee and the Rules which governed them. They contended that the proceedings were capricious and irrational, and the outcome thereof was not justified by the evidence, and the conduct with which they were charged constituted no more than the exercise of their right to legitimate political protest and expression. The applicants contended further that the Rules which governed the proceedings were unlawful and unconstitutional in that they 1) failed to allow for the proceedings to be conducted by an independent and impartial decision-maker as opposed to a committee which was subject to the whims and predilections of majoritarianism 2) did not

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<sup>4</sup> Id, para 47.

<sup>5</sup> Para 26.

contain 'sufficient guidelines' in respect of the production of evidence, the standard of proof, and the imposition of an appropriate sanction and 3) failed to provide a 'time-bar' for the institution of proceedings against errant MPs.

25. The respondents contend that there is no merit in the challenge, either as to substance, or as to the procedure which was followed in the case of the applicants. They point out that the Act contains detailed provisions<sup>6</sup> which regulate and govern disciplinary proceedings which are held in terms thereof, including provisions pertaining to the summoning of witnesses and their examination, and the admission of documentary and other evidence. They point out that in terms of the Constitution<sup>7</sup> and the Act,<sup>8</sup> Parliament is entitled to regulate its processes and procedures and to set rules for this purpose, and the fact that the representation of parties on Standing or *ad hoc* Committees is determined on a basis which may be proportional to their representation in Parliament does not render the proceedings of such committees open to an attack on the grounds of bias.
26. For the purposes of this judgment, it is not necessary for us to comment on the substantive merits of the attack which the applicants have launched, or their prospects of success. That is something for the Court which is required to deal with Part B of the application. We are simply required to determine whether the applicants have made out a proper case for the interim relief which they seek, on the premise that there may possibly be merit in one or more of the grounds of complaint which have been raised.
27. In their founding affidavit the applicants did not identify any constitutional or other *prima facie* right (at least not by name) which required protection, such that if an interim order was not granted to protect it, irreparable harm might ensue. They alluded to *voters* suffering a loss of the 'full benefits' of their political rights in terms of s 19 of the Constitution, because of the applicants' exclusion from Parliament.

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<sup>6</sup> In sections 14-16.

<sup>7</sup> Section 57.

<sup>8</sup> Sections 12-13.

28. In the supplementary founding affidavit, the sole right that was said to have been infringed was that of *audi alteram partem* i.e. the right to be heard which, it was averred, had been denied the applicants when the Committee had failed to afford them an opportunity to place mitigating factors before it, contrary to clause 9 of the Schedule. Consequently, so the applicants alleged, their constitutional rights in terms of s 33 (fair and just administrative action) and s 34 (access to court) had been breached. But, insofar as this alleged infringement goes (the respondents contend that there was no breach of the *audi* principle because clause 8 of the Schedule provides that where a member fails to attend a disciplinary hearing or to remain in attendance, the proceedings may continue in his/her absence), although this might give rise to a claim for the review and setting aside of the disciplinary proceedings, it surely does not qualify as the necessary *prima facie* right which requires protection by way of an interim interdict. If such a right was infringed, this occurred once in November 2023, and the applicants have effectively now been under suspension from 1 February 2024, and there is no suggestion that any *audi* right of theirs may again be infringed in the future, unless the interim relief requested is granted.
29. During argument the applicant's counsel contended that there was a 'bundle' of constitutional rights which had *prima facie* been infringed, including rights of equality (in terms of s 9 of the Constitution) and the rule of law (s 1(1)(c)) and fair and just administrative action (s 33) and access to Court (s 34). In response the respondents' counsel pointed out that not only had no case had been made out, in the papers, for the breach of any of such rights but, in any event, they could not be called up in aid of the applicants' case: in this regard s 1(1)(c) merely entrenched the principle of legality, the right to equality had never been implicated in the applicants' papers, s 33 did not apply as the conduct of Parliament did not constitute administrative action and s 34 had not been breached in any way, as the proceedings of the Committee were being challenged in a fair and public hearing in a Court of law. Respondents' counsel submitted further that, insofar as the applicants might seek to contend (although this had not been expressly pleaded), that it was their constitutional rights to

freedom of political expression (s 16) and to assembly and protest (s 17) that were in issue, these were not boundless and were limited by, and subject to, the strictures of s 57 of the Constitution which provides that the National Assembly may determine and control its proceedings and procedures, in terms of rules and orders it has made for this purpose.

30. I share the same difficulties that the respondents' counsel had in relation to whether the applicants properly and adequately set out a case for the infringement of any specific right, which requires protection, on a *prima facie* basis, as they were required to do. In my view the applicants failed to meet this requirement. But even if I were to be wrong on this aspect, in my view they similarly failed to make out a case in respect of the remaining requirements. In this regard, as far as irreparable harm is concerned in both their founding and supplementary founding affidavits the applicants simply contended that without an interim order they would suffer irreparable harm as they would have been punished by a process 'which they could never undo' as they would have lost a month's salary and would have been deprived of an opportunity to attend SONA and to put questions to the President in the question and answer session which will follow a few days thereafter. They pointed out these occasions would probably be the last time that the President addressed Parliament and could be held accountable before the election.
31. The respondents disputed that there would be any meaningful loss of the political right of expression and the right to hold the President accountable, were the suspension to remain in place, as the 6 applicants only represent approximately 14% of the first applicant's complement of MP's, as it has 44 elected representatives in Parliament, and they will be in a position to further both the party's and the applicants' interests in the forthcoming proceedings. In this regard in a further affidavit which was admitted, by agreement, the respondents referred to a statement which the second applicant (who is the party's Commander-in-Chief) made to the media on 4 February 2024, in which he said that the MPs who were not on suspension would attend Parliamentary proceedings and would represent those who were not.

32. As to the complaint that the applicants would suffer financial loss were the suspension not to be uplifted, in the very same paragraph in which this averment is made the applicants concede that, were the principal relief which they seek to be granted in the main application, they would be reimbursed for their salaries. Their gripe was really that there was no 'basis' for why they should be without a month's salary at this time of the year, when tuition fees were due and owing.
33. In the circumstances, on the applicants' own version there is no question of irreparable harm or loss being suffered. In the event that the principal application were to succeed any financial prejudice which the applicants may have suffered in lieu of the docking of their salaries would have to be redressed, and insofar as the applicants may have been compelled to tender any apology, it could be withdrawn.
34. As far as the balance of convenience is concerned the applicants simply contended that it was in their favour because, if they did not obtain an interim order they would have suffered irreparable harm and would have been punished by a process they could never undo. The respondents contended that the balance of convenience was tilted strongly in their direction. They pointed out that, were the Court to grant an order uplifting the applicants' suspension it would effectively render the sanction which was imposed nugatory, as it had specifically been intended by Parliament that the applicants were to be suspended for the month of February, so that they could not attend SONA. Were the Court to uplift the suspension it would render the sanction worthless and possibly incapable of implementation at a later date, given that some of the applicants might not return to Parliament after the election. Thus, by granting an order in the terms sought by the applicants the Court would effectively be granting them final relief which would never be capable of being undone. In my view there is considerable force in these submissions.
35. Parliament's choice of a suspension for the month of February was not coincidental or arbitrary, but a deliberate and conscious one. It specifically intended that the applicants should be suspended for the month of February so they would not be able to attend SONA, both as punishment for their behaviour

at the previous year's SONA and to prevent them from possibly causing a similar disruption at this year's one.

36. In the decision which was handed down by this Court (per Adhikari AJ) in *Peters*<sup>9</sup> on 29 January 2024, an interim interdict restraining the Speaker from implementing a resolution by the House, which was adopted on 28 November 2023, that the Deputy Minister of Small Business Development be suspended for the whole of the first term was refused, on the basis that to grant it would render the sanction nugatory, given Parliament's stated intentions when imposing it. The same considerations apply in this matter.
37. Finally inasmuch as the sanctions which were imposed on the applicants would be reversed were the applicants to succeed on the merits of their application in terms of Part B at a later date, and as a result the applicants would be recompensed for their loss of salary and would be at liberty to withdraw any apology they had been compelled to tender, the proceedings in terms of Part B will afford them redress in due course and constitute a satisfactory, alternative remedy which is available to them.
38. In the circumstances, going back to the principles which were set out in *OUTA* this is not an instance where the applicants have made out a strong and clear case for the grant of a temporary restraining order against Parliament and there are no exceptional circumstances which warrant such an order being granted, and were such an order to be granted it would trench on the terrain of Parliament and breach the separation of powers.
39. As far as the alternative order which was proposed is concerned i.e. for a suspension of the implementation of the report of the Committee and the sanctions which were adopted by Parliament in terms thereof, on the basis of s 172 (1)(b) of the Constitution, on the grounds that that it is just and equitable, for which the applicants sought to rely on the decision of the Constitutional Court in *Gordhan*,<sup>10</sup> in my view, this is not an instance where such an order can and should be granted.

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<sup>9</sup> *Peters v The Speaker of the National Assembly & Ors* (WCD 662/2014]

<sup>10</sup> *Economic Freedom Fighters v Gordhan & Ors* 2020 (6) SA 325 (CC).

40. Whilst the ambit and scope of such a remedy has not been clearly defined or delineated by the Courts, it can hardly be just and equitable to grant an order suspending the operation of a decision of Parliament, when the applicants have not shown the infringement of any *prima facie* right and will not suffer any real prejudice or harm were it not to be granted, least of all of an irreparable nature, and when granting such an order it will trench on the separation of powers and the duty which the Court has to pay due and proper respect to Parliament's competence to regulate its process and affairs, including the disciplining of its members. Unlike in *Gordhan*, were such an order to be granted in this matter it would cause prejudice to the organ of state.
41. For the foregoing reasons the application for interim relief in terms of Part A of the amended notice of motion must fail. As far as costs are concerned, the respondents submitted that, given the applicants' conduct this is an instance where an order for party-and-party costs would not be fair or sufficient, and they should not be out of pocket for any of the legal expenses that they have had to incur, and an order for costs on the scale as between attorney-client is warranted. I agree. As was previously pointed out, the manner in which the application came to be brought before the Court, on an extremely urgent basis, in circumstances where the urgency was occasioned by the applicants' abject failure to comply with their obligations in terms of orders which were granted at their instance, in itself warranted that it should be struck off the roll for a second time, which in itself would have attracted an attorney-client award for costs. But, aside from the abuse of process the matter is compounded by the fact that the application itself was fundamentally defective, insofar as the basic and essential requirements for the grant of the relief which was claimed is concerned. Thus, the respondents were required to come to Court urgently, on a repeat occasion, to oppose a matter that was not only an abuse of process but also hopeless. Instead of taking the opportunity, after the matter had been struck from the roll, to re-consider their position afresh, with due regard for their prospects of succeeding in obtaining interim relief on papers that were clearly inadequate, the applicants simply proceeded recklessly to re-enrol it again, after performing some

minor cosmetic surgery to it. In such circumstances it would, in my view, not be fair or appropriate for the respondents to have to bear any costs and a special costs order is necessary, as a mark of the Court's displeasure.

42. In the result, the following Order is made:

The application for interim relief in terms of Part A of the amended notice of motion is dismissed with costs on the scale as between attorney and client, including the costs of two counsel where so employed.

**M SHER**

**Judge of the High Court**

I agree, and it is so ordered.

**K SAVAGE**

**Judge of the High Court**

I agree.

**N MANGCU-LOCKWOOD**

**Judge of the High Court**



**Appearances:**

Applicants' counsel: K Premhid, T Masvikwa & J Naidoo

Appellant's attorneys: I Levitt Attorneys (Sandton)

Respondents' counsel: A Nacerodien and M Bishop

Respondents' attorneys: State Attorney (Cape Town)